

MANAGEMENT OF INDUSTRIAL ACTION AND WITHOLDING PAY POLICY

1. Introduction

The University prides itself on its record of establishing and supporting good employee relations both directly with its staff and by working in partnership with its recognised trade unions.

The University also recognises that there will be occasions where either local or national disputes may arise which may result in any of its recognised trade unions exercising its right to engage in industrial action. It is hoped, that as in the past, this would be a last resort and an extremely rare occurrence. Nothing in this policy is intended to indicate that the University anticipates that any of its recognised trade unions would wish to take industrial action.

Nevertheless, it is important for the University to make clear, before any such action takes place, its position on the approach it will take in managing any form of industrial action given that any industrial action can seriously affect students and other employees (who work normally during any period of industrial action). The policy is necessary to ensure that should action be taken, the University can protect its business viability and mitigate the risk it increasingly faces from student claims.

This policy covers official industrial action taken by employees in an industrial dispute involving a negotiation with a recognised trade union. It does not cover any action an employee may take as an individual, which is not in response to an official industrial dispute taken in support of a recognised trade union. The latter case would be covered by the University's disciplinary procedures.

2. Legal Industrial Action

Trade Unions are required to conduct a ballot of its members prior to any action and it must give at least seven days' notice to the start of any formal industrial action being taken at the University. In accordance with the Trade Union and Labour Relations (Consolidation) Act 1992 peaceful picketing at the University is allowable for the purposes of "obtaining or communicating information, or, peacefully persuading any person to work or abstain from working". However, secondary picketing in support of those individuals external to the University is unlawful.

Further information on the requirements and on industrial action more generally can be found at:

www.gov.uk/industrial-action-strikes

3. Policy Statement

The University understands that any form of industrial action taken by its employees is a breach of their employment contracts as they will not be doing the work they are paid to do. It also recognises that employees engaged in official industrial action are protected, subject to certain rules, against unfair dismissal, under the Employment Rights Act 1996 for a protected period, and thereafter, if there are selective dismissals. However there is no legal obligation for the University to pay employees for work that has not been done or for partial performance.

The University in responding to protect the interests of its business and the impact on its students will consider the impact of any action. The following sections detail the likely approach that the University will take for certain types of action.

3.1 Strike Action

It is hoped that any dispute could be resolved without escalation to such action. Should employees who are members of a recognised union engage in full strike action (i.e. withholding of labour), the University will seek to withhold one day's pay for each day of strike action taken, as it would be deemed to have a serious impact on the operation of the University. Withholding of pay is without prejudice to the right to change the amount of pay being withheld or any other claim for remedy for breach of contract being made against an employee.

3.2 Action Short of a Strike / Partial Performance

An employee is not entitled to pick and choose which of their contractual duties they will undertake. If an employee decides to take part in action short of a strike i.e. where they are willing to undertake some of their contractual duties but are refusing to undertake others, the University will reject any partial performance offered. Such partial performance of duties will be considered to be voluntary and will not be paid for. The University will withhold pay for each day that partial performance is undertaken. Withholding of pay is without prejudice to the right to change the amount of pay being withheld or any other claim for remedy for breach of contract being made against an employee.

The University reserves the right and at its discretion to, in certain circumstances, make a judgement on the likely impact of partial performance as low, medium and high and phase withholding of pay (on a sliding scale from 25% to 100%) according to how it rates the partial performance. Indicative but not exhaustive examples of the type of performance that may be classified under these 3 categories are as follows:-

Low / Medium Impact

- Refusal to undertake general administration, where this is not a major part of the role
- Disruption of student services such as residential and catering services
- Refusal to take part in important management procedures e.g. appraisal and professional development planning

High Impact – justifying 100% withholding of pay

- Refusal to undertake duties to enrol students / collect fees where this is a significant part of the role
- Refusal to take classes, lectures and seminars
- Refusal to set examinations / assessments when required
- Refusal to undertake the marking of examination scripts / assessments and deliver marks by the required deadline
- Refusal to carry out assessment duties according to the approved timetable
- Refusal to carry out duties in relation to quality assurance procedures such as validations, QAA/OFSTED inspections and audits, where such procedure was imminent in the University's calendar
- Refusal to undertake IT systems maintenance, etc
- Disruption to significant parts of the business e.g. Library services
- Action which places staff and students at risk e.g. disruption of security / building management or non co-operation with health and safety protocols and procedures.

In exercising this discretion the University may withhold pay over the whole period of continuous disruption, for as long as this disruption is made.

3.3 Withholding of Pay

A day's pay under this policy is calculated on the basis of 1/260th of an employee's salary in line with other HEIs (post any salary sacrifice). The University may vary the method of calculation for employees on variable hours, fractional or term time only contracts.

Please note the withholding of pay is without prejudice to any other right or remedy of the University, including any claim for damages for breach of contract.

The University administers a number of pension schemes. Employees wishing to understand how any withholding of pay may affect their service, benefits and/or death in service benefit should view the relevant scheme rules published by the respective pension provider.

3.4 Working to Contract / Working to Rule

Action Short of a Strike in the form of 'Working to Contract' or 'Working to Rule' can be lawful industrial action.

The University expects all employees to carry out all of their contractual duties as set out in their job description, contract of employment, those that have been assigned to him / her by their Head of School / Service and those that are undertaken by custom and practice. Furthermore the University considers the duties of co-operation and faithful service as implied in University contracts of employment.

The University will not withhold pay (as set out in section 3.3 above) if employees continue to abide by their contractual terms and work normally and efficiently during any industrial action. However, refusal to carry out their contractual duties will be deemed to be a breach of contract and consider to be partial performance – thus will trigger the withholding of pay.

3.5 Identifying Employees taking part in Industrial Action

The University is entitled to know which employees are taking part in industrial action, where action takes the form of either strike action or action short of a strike.

Employees are encouraged to confirm to their Head of School / Service that they are 'withholding' their labour at the earliest opportunity. This will enable the University to ensure that any disruption to the student experience is kept to an absolute minimum.

Should the University receive notification of such action taking place, it will normally contact all employees in the categories potentially covered by the industrial action in question reminding them that should they fail to undertake their full, normal duties due to participating in industrial action, they will be in breach of contract which will not be accepted by the University and pay will be consequently withheld. Employees will be required to declare whether or not they are taking part in industrial action by a set deadline and should no response be received from them or where ambiguous information is provided, then the University will assume that they are taking part in the industrial action and pay will be withheld.

The University expects the following employees to work 'normally' during any period of industrial action;

- Employees who are not members of the recognised trade union undertaking industrial action.

- Employees who are members of the recognised trade union undertaking industrial action but have not confirmed formally that they will be taking part in industrial action.

It is the responsibility of all Heads of School / Service to record employee absences. This is particularly important during periods of industrial action being undertaken. Heads of School / Service should notify their HR Business Partner if they know or suspect that an individual has withheld labour and not declared this.

Employees who are found to have withheld their labour and not declared will have their pay subsequently withheld.

3.6 Absence

Requests for annual leave and to work from home are subject to the University's normal procedures. Only in exceptional circumstances should Heads of School / Service grant requests for annual leave and/or homeworking on the dates of industrial action submitted once the dates of industrial action are known. No retrospective requests will be approved.

The University requires a doctors "Fit Note" from any employee who reports an absence due to sickness absence on any notified date of industrial action. The University will reimburse any reasonable charge made by a doctor.

A refusal to cross a picket line is not a legitimate reason for any absence from work the University will withhold pay for any employee who refuses to cross a picket line.

3.7 Return to Normal Working

Once a dispute has been resolved or confirmation from an employee that they are no longer taking part in industrial action, the University will start to pay employees their normal pay for their role. The University will not however, pay any sums withheld from an employee during the dispute.

3.8 Inappropriate Treatment

Peaceful picketing is lawful at or near (but not on) the place of work. Any employee who feels or witnesses intimidation during any period of industrial action should report it to their Head of School / Service and/or HR Business Partner.

3.9 Further Information

The University will provide employees with relevant information regarding any industrial action via email, letter, Inside UoB article and on the HR web pages.

Employees are encouraged to view any such published information communicated during a period of industrial action.

Please note, employees (unless authorised to do so) should refrain from speaking to a representative of the media on behalf of the University during a period of industrial action and be aware that any communication made on a private basis may be damaging to both the student experience and the University more generally.

4. Other Related Policies

4.1 Staff Disciplinary Procedure

4.2 Sickness Absence Policy

4.3 Working from Home Guidelines

5. Monitoring and Review

This policy will be reviewed annually or whenever enacted by the Executive Board and will be monitored by the HR Director.

6. Dissemination of and Access to the Policy

This policy will be made available to employees via their Head of School / Service and will also be published on the HR pages of the University's website.

7. Equality Impact Assessment

The University of Bolton is committed to the promotion of equality, diversity and a supportive environment for all members of our community. Our commitment to equality and diversity means that this policy has been screened in relation to the use of plain English, the promotion of the positive duty in relation to the protected characteristics of race, sex, disability, age, sexual orientation, religion or belief, gender reassignment, marriage and civil partnership, pregnancy and maternity

All University policies, once approved, will be held electronically in a document repository on the University intranet and a hard copy deposited in the Vice Chancellor's Office. Copies of this policy will also be available in HR.

Policy Ref	
Version Number	2
Version Date	May 2016
Name of Developer/Reviewer	HR Director
Policy Owner (School/Centre/Unit)	HR Director
Person responsible for implementation (postholder)	HR Director
Approving Committee/Board	Executive Board
Date approved	
Effective from	May 2016
Dissemination method (e.g. website)	All staff e-mail, letters and website
Review Frequency	Annually
Reviewing Committee	Executive Board
Document History (e.g. rationale for and dates of previous amendments)	Updated following review